

## **Appendix A - Contract Language**

(Insert Std. Form 2)

**REVERSE SIDE OF STD. FORM 2**

The Contractor agrees to indemnify, defend and save harmless the State, its officers, agents, and employees from any and all claims and losses, with the exception of consequential damages, accruing or resulting to any other person, firm or corporation furnishing or supplying work, services, materials, or supplies in connection with the performance of this contract, and from any other and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by the Contractor in the performance of this contract which are attributable to the negligence or intentionally tortious acts of the Contractor.

The Contractor, and the agents and employees of Contractor, in performance of the agreement, shall act in an independent capacity and not as officers or employees or agents of State of California.

Time is of the essence in this agreement.

No alteration or variation of the terms of this contract shall be valid unless made in writing and signed by the parties hereto, and no oral understanding or agreement not incorporated herein, shall be binding on any of the parties hereto.

## **GENERAL TERMS AND CONDITIONS**

### **1. GENERAL:**

The purpose of this document is to define certain services, establish the responsibility for delivery of these services, and prescribe the payment therefore.

This Agreement shall be governed by the laws of the State of California.

### **2. FUNDING:**

The State's obligation is payable only and solely from funds appropriated for the purpose of this Agreement. The State's monetary obligation under this Agreement in subsequent fiscal years is subject to and contingent upon availability of funds appropriated for the purpose of this Agreement.

The State is not liable for payment of services that are ordered by non-state entities.

### **3. CONSIDERATION:**

The consideration to be paid the Contractor, as provided herein, shall be in compensation for all of the Contractor's expenses incurred in the performance hereof, including travel and per diem, unless otherwise expressly so provided.

### **4. STATEMENT OF WORK:**

Contractor shall make available to the State technically competent personnel for the purpose of providing the services described in this Agreement, in the manner described herein.

The Contractor agrees that Contractor will perform the services and provide the materials for which the Contractor is responsible, that Contractor will accomplish this work in the manner and in the time stated herein, and that the Contractor will provide the deliverable items as required.

### **5. CONTROL AND SUPERVISION:**

The services provided by the Contractor shall be under the control, management, and supervision of the Contractor.

The Contractor is fully responsible for all work performed under this Agreement including subcontracted work.

The Contractor is wholly responsible for the performance of its employees, agents, subcontractors and suppliers in fulfilling its obligations described in this Agreement.

### **6. STANDARD OF PROFESSIONALISM:**

Contractor shall conduct all work consistent with professional standards for the

industry and type of work being performed under the Agreement.

**7. PERSONNEL WORKING ON STATE PREMISES:**

When Contractor needs access to State's premises to perform the required services under this Agreement, contractor personnel shall perform their duties during State's regular work days and normal work hours, except as may be specifically agreed to otherwise by the State.

The State reserves the right to disapprove the continuing assignment of Contractor personnel working on State premises. If the State exercises this right, and the Contractor cannot immediately replace the disapproved personnel, the State agrees to an equitable adjustment in schedule or other terms that may be affected hereby.

The Contractor will make every effort consistent with sound business practices to honor the specific request of the State with regard to assignment of its employees; however, subject to the above paragraph, the Contractor reserves the sole right to determine the assignment of its employees. If a Contractor employee is unable to perform due to illness, resignation, or other factors beyond the Contractor's control, the Contractor will make every reasonable effort to provide suitable substitute personnel.

In recognition of the fact that Contractor personnel providing services under this Agreement may perform similar services from time to time for others, this Agreement shall not prevent Contractor from performing such similar services or restrict Contractor from using the personnel provided to the State under this Agreement, providing that such use does not conflict with the performance of services under this Agreement.

**8. WAGES:**

The Contractor shall pay his/her employees wages not less than those required by any applicable law.

**9. LICENSES/PERMITS:**

The Contractor shall obtain and, at their expense, pay for any/all licenses/permits required by law for accomplishing any work required in connection with this contract.

**10. CONTRACTOR EVALUATION:**

The contractor's performance will be frequently evaluated in accordance with Service Agreements for each service delivered throughout the term of this Agreement.

**11. EXAMINATION AND AUDIT BY STATE AUDITOR:**

Contractor will be subject to examination and audit of the State Auditor for a

period of three years after final payment under the contract in accordance with Government Code Section 8546.7. The examination and audit shall be confined to those matters connected with the performance of the contract including, but not limited to, the costs of administering the contract.

**12. EXAMINATION AND AUDIT BY DGS/TD:**

Contractor agrees that DGS/TD or its delegatee will have the right to review, obtain, and copy all records pertaining to performance of the contract. Contractor agrees to provide DGS/TD or its delegatee with any relevant information requested and shall permit DGS/TD or its delegatee access to its premises, upon reasonable notice, during normal business hours for the purpose of interviewing employees, and inspecting and copying such books, records, accounts, and other material that may be relevant to a matter under investigation for the purpose of determining compliance with this requirement. Contractor further agrees to maintain such records for a period of three years after the date of occurrence including three years after the termination of the contract.

**13. CONTRACT AUDITS FOR DISABLED VETERAN BUSINESS ENTERPRISE REQUIREMENTS:**

For purposes of insuring compliance of Disabled Veteran Business Enterprise requirements, Contractor agrees that the State or its delegatee will have the right to review, obtain, and copy all records pertaining to performance of the contract. Contractor agrees to provide the State or its delegatee with any relevant information requested and shall permit the State or its delegatee access to its premises, upon reasonable notice, during normal business hours for the purpose of interviewing employees, and inspecting and copying such books, records, accounts, and other material that may be relevant to a matter under investigation for the purpose of determining compliance with this requirement. Contractor further agrees to maintain such records for a period of three years after final payment under the contract.

**14. NATIONAL LABOR RELATIONS BOARD CERTIFICATION:**

By signing this contract, the Contractor swears, under the penalty of perjury, that no more than one final, unappealable finding of the contempt of court by Federal Court has been issued against the Contractor within the immediately preceding two-year period because of the Contractor's failure to comply with an order of the National Labor Relations Board. This provision is required by, and shall be construed in accordance with Public Contract Code Section 10296.

**15. CONTRACTOR'S LICENSE:**

Contractors and subcontractors performing cable and/or wiring installation or modification work, trenching, or structural modifications for the State are required to have the appropriate State Contractor's License. The License must be in the name of the company or the name of the "qualifying individual" of the

company.

Contractor certifies under penalty of perjury, the accuracy of the representations made with regard to the contractor's license number, class, and expiration date.

The Contractor shall pay the prevailing rate of wages for regular, overtime, and holiday work plus employer payments for benefits generally prevailing in the locality in which the work is performed, for all crafts, classifications or types of workmen used on state premises at the point of delivery by the Contractor for the assembly and installation of material purchased under this contract.

**16. PUBLIC WORKS REQUIREMENTS (APPLICABLE TO INSTALLATION ONLY):**

In accordance with the provisions of Section 1773 of the California Labor Code, the Contractor shall conform and stipulates to the general prevailing rate of wages, including employer benefits as defined in Section 1773.1 of the California Labor Code, applicable to the classes of labor to be used for public works such as at the delivery site for the assembly and installation of the equipment of materials purchased under the contract.

Pursuant to Section 1770 of the California Labor Code, the Department of Industrial Relations has ascertained the general prevailing rate of wages in the county in which the work is to be done, to be as listed in the Department of Transportation booklet entitled General Prevailing Wage Rates. The booklet is required to be posted at the job site. Contact the Department of Industrial Relations, Prevailing Wage Unit at (415) 972-8628.

Prior to the commencement of performance of a specific installation, the Contractor must obtain and provide to the State, a payment bond, on STD 807 when the contract involves a public works expenditure (labor/installation costs) in excess of \$5,000.00. Such bond shall be in a sum not less than one-half the contract price for the public works portion of the labor/installation costs. Forms will be made available to the Contractor.

If the Contractor desires to add or replace a subcontractor, as set forth in Exhibit V-G of its proposal, prior written approval must be obtained from the State in accordance with Public Contract Code Section 4107.

The Contractor must certify that it is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the Code, and will comply with such provisions before commencing with the performance of work of this contract. Contractor certifies that it has workers' compensation coverage required by law.

**17. LAWS TO BE OBSERVED (APPLICABLE TO PUBLIC WORKS ONLY):**

**a). Labor**

Pursuant to Section 1775 of the California Labor Code, the Contractor shall, as a penalty to the State or political subdivision on whose behalf the contract is made or awarded, forfeit not more than fifty dollars (\$50 for each calendar day, or portion thereof, for each worker paid by the Contractor, or its subcontractor, less than the prevailing wage rate as determined by the Director of Industrial Relations; and in addition, the Contractor further agrees to pay to each worker the difference between the actual amount paid for each calendar day, or portion thereof, and the prevailing wage rate for the same. This provision shall not apply to properly registered apprentices.

Pursuant to Sections 1810-1815 of the California Labor Code, inclusive, it is further agreed that the maximum hours a worker is to be employed is limited to eight hours a day and forty hours a week and the Contractor shall forfeit, as a penalty to the State, twenty-five dollars (\$25) for each worker employed in the execution of the contract for each calendar day during which a worker is required or permitted to labor more than eight hours in any calendar day or more than forty hours in any calendar week, in violation of Sections 1810-1815 of the California Labor Code, inclusive.

**b). Travel and Subsistence Payments**

The Contractor shall pay the travel and subsistence of each worker needed to execute the work, as such travel and subsistence payments are defined in the applicable collective bargaining agreements filed in accordance with California Labor Code Section 1773.8.

**c). Apprentices**

Special attention is directed to Sections 1777.5, 1777.6, and 1777.7 of the California Labor Code and Title 8, California Code of Regulations Section 200 et seq. Each Contractor and/or subcontractor must, prior to commencement of the public works contract, contact the Division of Apprenticeship Standards, 45 Fremont Street, San Francisco, CA, or one of its branch offices to ensure compliance and complete understanding of the law regarding apprentices and specifically the required rationale thereunder. Responsibility for compliance with this section lies with the prime Contractor.

**d). Payroll**

The Contractor shall keep an accurate payroll record showing the name, address, Social Security Account Number work classification and straight



time and overtime hours worked by each employee. A certified copy of the employee's payroll record shall be made available for inspection as specified in Section 1776 of the California Labor Code.

**18. STATEMENT OF COMPLIANCE:**

The Contractor's signature, affixed hereon and dated, shall constitute a certification, under the penalty of perjury under the laws of the State of California, that the Contractor has, unless exempted, complied with the nondiscrimination program requirements of Government Code Section 12990, and Title 2, California Administrative Code Section 8103.

**19. CONFIDENTIALITY OF DATA:**

All financial, statistical, personal, technical, and other data and information relating to the State's operation which are designated confidential by the State and made available to the Contractor in order to carry out this Agreement, or which become available to the Contractor in carrying out this Agreement, shall be protected by the Contractor from unauthorized use and disclosure through the observance of the same or more effective procedural requirements as are applicable to the State. The identification of all such confidential data and information as well as the State's procedural requirements for protection of such data and information from unauthorized use and disclosure shall be provided by the State in writing to the Contractor. If the methods and procedures employed by the Contractor for the protection of the Contractor's data and information are deemed by the State to be adequate for the protection of the State's confidential information, such methods and procedures may be used, with the written consent of the State, to carry out the intent of this paragraph. Contractor shall not be required under the provisions of this paragraph to keep confidential any data or information which is or becomes publicly available, is already rightfully in the Contractor's possession, is independently developed by the Contractor outside the scope of the Agreement, or is rightfully obtained from third parties.

**20. DISPUTE RESOLUTION:**

- a) The parties shall deal in good faith and attempt to resolve potential disputes informally. If the dispute persists, and the project managers are not able to agree on a resolution to any particular issue, e.g. Requirements Definition, an Executive Committee consisting of DGS/TD's Project Manager and representatives of DGS/TD's executive management, a representative of the Department of General Services Procurement Division, and the Contractor's Project Manager and representatives of the Contractor's Public Sector Practice and Business Operations will convene and a resolution decided upon within five (5) state business days from the date the Committee convenes. Either Project Manager may request the Executive Committee to convene, and the Committee will convene in person or by telephone within three (3) state business days of such request. The Executive Committee will use whatever

resources it deems necessary to seek a rapid and just resolution to each issue. In the event that the parties cannot resolve an issue at the Executive Committee level within the time frame agreed upon, either party may assert its other rights and remedies as provided by this Agreement or within a court of competent jurisdiction within the State of California, Sacramento County.

- b) The state and contractor agree that the existence of a dispute notwithstanding, they will continue to carry out their responsibilities under this Contract, including the delivery of goods or providing of services in accordance with the State's instructions. Contractor's failure to diligently proceed in accordance with the State's instructions shall be considered a material breach of this contract.
- c) The State will not mediate disputes between the Contractor and any other entity, except state agencies, concerning responsibility for performance of work.

**21. DRUG-FREE WORKPLACE CERTIFICATION:**

By signing this agreement, the Contractor hereby certifies under penalty of perjury under the laws of the State of California that the Contractor will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code Section 8350 et seq.) and will provide a drug-free workplace by taking the following actions:

- a) Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying action to be taken against employees for violations, as required by Government Code Section 8355(a).
- b) Establish a Drug-Free Awareness Program as required by Government Code Section 8355(b) to inform employees about all of the following:
  - 1) the dangers of drug abuse in the workplace;
  - 2) the person's or organization's policy of maintaining a drug-free workplace;
  - 3) any available counseling, rehabilitation and employee programs; and
  - 4) penalties that may be imposed upon employees for drug abuse violations.
- c) Provide, as required by Government Code Section 8355(c), that every employee who works on the proposed agreement:
  - 1) will receive a copy of the company's drug-free policy statement; and
  - 2) will agree to abide by the terms of the company's statement as a condition of employment on the agreement.

Failure to comply with these requirements may result in suspension of payments under the agreement or termination of the agreement or both and the Contractor

may be ineligible for award of any future state agreements if the State determines that any of the following has occurred: (1) the Contractor has made false certification or (2) violates the certification by failing to carry out the requirements as noted above.

**22. NONDISCRIMINATION COMPLIANCE STATEMENT:**

During the performance of this Agreement, Contractor and its subcontractors shall not unlawfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, age (over 40), or sex. Contractors and subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination. Contractors and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12900 et seq.) and the applicable regulations promulgated thereunder (California Administrative Code, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12990, set forth in Chapter 5 of Division 4 of Title 2 of the California Administrative Code are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

This Contractor shall include the nondiscrimination and compliance provisions of the clause in all subcontracts to perform work under this agreement.

**23. PATENT, COPYRIGHT AND TRADE SECRET PROTECTION:**

The Contractor, at its own expense, shall defend any action brought against the State to the extent that such action is based upon a claim that the equipment or software supplied by the Contractor, or the operations of such equipment or software infringes a United States patent or copyright, or violates a trade secret. The Contractor shall pay those costs and damages finally awarded against the State in any such action. Such defense and payment shall be conditioned on the following:

- a) That the Contractor shall be notified within a reasonable time in writing by the State of any notice of such claim; and,
- b) That the Contractor shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise; provided, however, that when principles of government or public law are involved, the State shall have the option to participate in such action at its own expense.

Should the machines or software, or the operation thereof, become, or in the Contractor's opinion are likely to become, the subject of a claim of infringement of a United States patent, or copyright or a trade secret, the State shall permit the Contractor at its option and expense either to procure for the State the right to

continue using the machines or software, or to replace or modify the same so that they become non-infringing. If neither of these options can be reasonably taken, or if the use of such equipment or software by the State shall be prevented by injunction, the Contractor agrees to take back such equipment or software and make every reasonable effort to assist the State in procuring substitute equipment or software. If, in the sole opinion of the State, the return of such infringing equipment or software makes the retention of other items of equipment or software leased from the Contractor under this or any other contract impractical, the State shall then have the option of terminating such contracts, or applicable portions thereof, without penalty or termination charge, and may acquire substitute equipment or software from any other source the State deems appropriate.

**24. RISK OF LOSS OR DAMAGE:**

The State shall be relieved from all risks of loss or damage to the equipment supplied under this contract during periods of transportation, installation and during the entire time the equipment is in the possession of the State, except when such loss or damage is due to fault or negligence of the State or where the State has title to the equipment in its possession.

**25. CONTRACTOR'S POWER AND AUTHORITY:**

The Contractor warrants that it has full power and authority to grant the rights herein granted and will hold the State hereunder harmless from and against any loss, cost, liabilities, and expense (including reasonable attorney fees) arising out of any breach of the warranty. Further, Contractor avers that it will not enter into any arrangement with any third party which might abridge any rights of the State under this contract.

**26. GUARANTEE:**

The contractor guarantees that work performed in accordance with this contract shall be fit for use as intended throughout the entire term of this contract and shall be in accordance with all contract requirements.

**27. TITLE TO EQUIPMENT:**

Title to equipment, accessories, and devices provided under this contract shall not vest in the State, unless such items are purchased by the State. All devices and accessories furnished by the Contractor hereunder, except those purchased by the State, shall accompany the equipment when returned to the Contractor.

**28. FORCE MAJEURE:**

Except for defaults of subcontractors, neither party shall be responsible for delays or failures in performance resulting from acts beyond the control of the offending party. Such acts shall include but shall not be limited to acts of God, fire, flood,

earthquake, other natural disaster, act of war, nuclear accident, strike, lockout, riot, freight embargo, or governmental statutes or regulations superimposed after the fact. If a delay or failure in performance by the Contractor arises out of default of its subcontractor, and if such default arises out of causes beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either of them, the Contractor shall not be liable for damages for such delay or failure, unless the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required performance schedule.

**29. CONTRACTOR'S LIABILITY FOR INJURY TO PERSONS OR DAMAGE TO PROPERTY:**

The Contractor shall be liable for damages arising out of injury to the person and/or damage to the property of the State, employees of the State, persons designated by the State for training, or any other person(s) other than agents or employees of the Contractor, designated by the State for any purpose, prior to, during, or subsequent to delivery, installation, acceptance, and use of the equipment either at the Contractor's site or at the State's place of business, provided that the injury or damage was caused by the fault or negligence of the Contractor.

Contractor shall not be liable for damages arising out of or caused by an alteration or an attachment not made or installed by the Contractor, or for damage to alterations or attachments that may result from the normal operation and maintenance of the Contractor's equipment.

**30. CONFLICT WITH EXISTING LAW:**

The Contractor and the State agree that if any provision of this contract is found to be illegal or unenforceable, such term or provision shall be deemed stricken and the remainder of the contract shall remain in full force and effect. Either party having knowledge of such term or provisions shall promptly inform the other of the presumed nonapplicability of such provision. Should the offending provision go to the heart of the contract, the contract shall be terminated in a manner commensurate with interests of both parties, to the maximum extent reasonable.

**31. ASSIGNMENT:**

This contract shall not be assignable in whole or in part without the written consent of the State. It is the policy of the State of California to withhold consent from proposed assignments, subcontracts, or novations when such transfer of responsibility would operate to decrease the State's likelihood of receiving performance on the contract. The State does not normally object to the granting of assignments for financial purposes, such as the payment of rent and other charges to third parties, provided that the original Contractor retains all of its responsibilities and obligations under the contract. In the event of any

subcontract hereunder to which the State has consented, each such subcontract shall contain a provision that further assignment shall not be made to any third or subsequent subcontractor without additional written consent of the State.

### **32. CHANGES:**

The State may, any time, exclusively in a writing signed by the Department Director or designee, and without notice to sureties, make changes within the general scope of this Contract which affect the (a) drawings, designs or specifications; (b) method of shipment or packing; (c) place of inspection, delivery or acceptance; (d) delivery schedules; or (e) description of services to be performed; time of performance of services (i.e., hours of the day, days of the week, etc.); or place of performance of services.

If any such change causes an increase or decrease in the cost of, or the time required for, performance of this contract, an equitable adjustment shall be made in the contract price or delivery schedule or both, and the contract shall be modified in writing accordingly. Any request by Contractor for adjustment under this provision must be asserted in writing to the Department Director or designee not later than thirty (30) days after the date of receipt by Contractor of written change authorization, or within such extension as the State may grant in writing. The State may, in its sole discretion, consider any such request regardless of when asserted. Pending any such adjustment, Contractor will diligently proceed with the contract as modified. Where the cost of property made excess or obsolete as a result of the change is included in Contractor's request for contract adjustment, the State shall have the right to direct the manner of disposition of such property. The State shall have the right to require the submission of supporting cost data and/or to inspect Contractor's pertinent books and records for the purpose of verifying Contractor's request and determining the basis for entitlement to an adjustment.

Contractor's claim for adjustment shall be in the form of a complete change proposal fully supported by factual information and shall separately identify all increases and all decreases in costs. The claim shall be submitted by a senior official authorized to bind the Contractor in a signed writing that contains the following certification statement: "I certify that the claim is made in good faith, that the supporting data are accurate and complete to the best of my knowledge and belief and that the amount requested accurately reflects the contract adjustment for which (insert Contractor's name here) believes the State is liable."

### **33. STOP WORK:**

The State may, at any time, by written stop work order to the Contractor, require the Contractor to stop all, or any part, of the work called for by this contract for a period of 90 days after the stop work order is delivered to the Contractor, and for any further period to which the parties may agree. The stop work order shall be specifically identified as such and shall indicate it is issued under this clause. Upon receipt of the stop work order, the Contractor shall immediately comply

with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the stop work order during the period of work stoppage. Within a period of 90 days after a stop work order is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the State shall either:

- a) Cancel the stop work order; or
- b) Terminate the work covered by the stop work order as provided for in the termination for default or the termination for convenience clause of this contract.

If a stop work order issued under this clause is canceled or the period of the stop work order or any extension thereof expires, the Contractor shall resume work. The State shall make an equitable adjustment in the delivery schedule, the contract price, or both, and the contract shall be modified, in writing, accordingly, if:

- a) The stop work order results in an increase in the time required for, or in the Contractor's cost properly allocable to the performance of any part of this Contract; and
- b) The Contractor asserts its right to an equitable adjustment within 30 days after the end of the period of work stoppage; provided, that if the State decides the facts justify the action, the State may receive and act upon a proposal submitted at any time before final payment under this contract.

If a stop work order is not canceled and the work covered by the stop work order is terminated in accordance with the provisions entitled Termination for Convenience, the state shall allow reasonable costs resulting from the stop work order in arriving at the termination settlement.

An appropriate equitable adjustment may be made in any related contract of the Contractor that provides for adjustment and is affected by any stop work order under this clause.

#### **34. *RIGHTS AND REMEDIES OF THE STATE FOR DEFAULT:***

The State may terminate this contract and be relieved of the payment of any consideration to the Contractor should Contractor fail to perform the covenants herein contained at the time and in the manner herein provided.

In the event any equipment, software, or service furnished by the Contractor in the performance of this contract should fail to conform to the specifications therefore, the State may reject the same, and it shall thereupon become the duty of the Contractor to reclaim and remove the same forthwith, without expense to the State, and immediately to replace all such rejected equipment, software, or service with others conforming to such specifications; provided that should the Contractor fail, neglect or refuse to do so the State shall thereupon have the right

to purchase in the open market, in lieu thereof, a corresponding quantity of any such equipment, software, or service and to deduct from any moneys due or that may thereafter become due to the Contractor the difference between the price named in this contract and the actual cost thereof to the State.

In the event the Contractor shall fail to make prompt delivery as specified of any equipment, software, or service, the same conditions as to the rights of the State to purchase in the open market and to reimbursement set forth above shall apply, except as otherwise provided in the Force Majeure clause of this Agreement.

If, because of mechanical failure, or for any other reason, the Contractor should be temporarily unable to perform the work as required, the State, during the period of the Contractor's inability to perform, reserves the right to accomplish the work by other means and shall be reimbursed by the Contractor for any additional costs above the contract price, and Contractor agrees that the State may deduct said amount from any monies due under the contract.

In the event of the cancellation of this contract either in whole or in part, by reason of the default or breach thereof by the Contractor, any loss or damage sustained by the State in procuring any equipment, software or service which the Contractor therein agreed to supply shall be borne and paid for by the Contractor.

**35. WAIVER OF BREACH:**

No term or provision of this contract shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by an individual authorized to so waive or consent. Any consent by either party to, or waiver of, a breach by the other whether expressed or implied, shall not constitute a consent to, waiver of, or excuse for, any other breach or any subsequent breach, except as may be expressly provided in the waiver or consent.

**36. TERMINATION FOR CONVENIENCE:**

(The State does not intend to terminate this contract in total for convenience. However, provisions must be included as Senate Bill 1 provided for (in Section 11712 of the Government Code) the Director of the Department of Information Technology to have the authority to terminate information technology projects.)

The State may terminate performance of work under this Contract for its convenience in whole or, from time to time, in part if the Department Director or designee determines that a termination is in the State's interest. The Department Director or designee shall terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and the effective date thereof.

The parties agree that, as to the terminated portion of the contract, the contract shall be deemed to remain in effect until such time as the termination settlement, if any, is concluded and the contract shall not be void.

After receipt of a Notice of Termination, and except as directed by the



Department Director or designee, the Contractor shall immediately proceed with the following obligations, as applicable, regardless of any delay in determining or adjusting any amounts due under this clause. The Contractor shall:

- a) Stop work as specified in the Notice of Termination.
- b) Place no further subcontracts for materials, services, or facilities, except as necessary to complete the continued portion of the contract.
- c) Terminate all subcontracts to the extent they relate to the work terminated.
- d) Settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; the approval or ratification of which will be final for purposes of this clause.
- e) As directed by the Department Director or designee, transfer title and deliver to the State (a) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated, and (b) the completed or partially completed plans, drawings, information, and other property that, if the contract had been completed, would be required to be furnished to the State.
- f) Complete performance of the work not terminated; and
- g) Take any action that may be necessary or as the State may direct for the protection and preservation of the property related to this Contract that is in the possession of the Contractor and in which the State has or may acquire an interest and to mitigate any potential damages or request for contract adjustment or termination settlement to the maximum practical extent.

At the completion of the Contractor's termination efforts, the Contractor may submit to the Department Director or designee a list, indicating quantity and quality of termination inventory not previously disposed of, and request instruction for disposition of the residual termination inventory.

After termination, the Contractor shall submit a final termination settlement proposal to the Department Director or designee in the form and with the certification prescribed by the Department Director or designee. The Contractor shall submit the proposal promptly but no later than ninety (90) days from the effective date of termination, unless extended in writing by the State upon written request of the Contractor within the ninety (90) day period. However, if the Department Director or designee determines that the facts justify it, a termination settlement proposal may be received and acted on after the expiration of the filing period or any extension. If the Contractor fails to submit the proposal within the time allowed, the Department Director or designee may determine on the basis of information available, an equitable adjustment amount, if any, due the Contractor because of the termination and shall pay the amount determined.

The Contractor and the State may agree upon the whole or any part of the amount to be paid because of the termination. The amount may include a reasonable allowance for profit on work done, including a reasonable amount for accounting, legal, clerical and other expenses reasonably necessary for the preparation of

termination settlement proposals and supporting data; and storage, transportation and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory. However, the agreed amount, may not exceed the total contract price as reduced by (1) the amount of payments previously made and (2) the contract price of work not terminated. The contract shall be amended, and the Contractor paid the agreed amount. (The total contract price for this calculation shall be considered the seven (7) year evaluated amount approved in the Feasibility Study for the CIIN project developed by the state prior to contract award.)

If the Contractor and the State fail to agree on the whole amount to be paid because of the termination of work, the State shall pay the Contractor the amounts determined by the State as follows, but without duplication of any amounts agreed on as set forth above:

- a) The contract price for completed supplies or services accepted by the State (or sold or acquired) not previously paid for, adjusted for any saving of freight and other charges.
- b) The total of:
  - 1) The costs incurred in the performance of the work terminated, including initial costs and preparatory expense allocable thereto, but excluding any costs attributable to supplies or services paid or to be paid; and
  - 2) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract; and
  - 3) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.
- c) The amount associated with relieving the state of the liabilities described in Rider A, Special Agreements, with consideration being given to the amortization/depreciation taken on those liabilities, and the amount recovered over time from the contracted volume of business.

Except for normal spoilage, and except to the extent that the State expressly assumed the risk of loss, the State shall exclude from the amounts payable to the Contractor, the fair value, as determined by the Department Director or designee, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to the State or to a buyer.

The Contractor shall use generally accepted accounting principles and sound business practices in determining all costs claimed, agreed to, or determined under this clause. Such costs shall be allocable to the terminated contract or portion thereof, allowable under applicable laws, regulations, generally accepted accounting principles and good business judgment and objectively reasonable.

The Contractor shall have the right of appeal, under the Disputes clause, from any

determination made by the State, except that if the Contractor failed to submit the termination settlement proposal within the time provided and failed to request a time extension, there is no right of appeal. If the Department Director or designee has made a determination of the amount due, the State shall pay the Contractor (1) the amount determined if there is no right of appeal or if no timely appeal has been taken, or (2) the amount finally determined on appeal. Following any attempted administrative resolution with the Department Director or designee, the Contractor may proceed in accordance with the dispute resolution clause of the contract.

In arriving at the amount due the Contractor under this clause, there shall be deducted:

- a) All payments to the Contractor under the terminated portion of this contract;
- b) Any claim which the State has against the Contractor under this or any other contract;
- c) The agreed price for, or the proceeds of sale of, materials, supplies, or other things acquired by the Contractor or sold under the provisions of this clause and not recovered by or credited to the State.

If the termination is partial, the Contractor may file a proposal with the Department Director or designee for an equitable adjustment of the price(s) of the continued portion of the contract. The Department Director or designee shall make any equitable adjustment agreed upon. Any proposal by the Contractor for an equitable adjustment under this clause shall be requested within 30 days from the effective date of termination unless extended in writing by the Department Director or designee.

The State may:

- a) Under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Contractor for the terminated portion of the contract, if the State believes that the total of these payments will not exceed the amount to which the Contractor will be entitled.
- b) If the total payments exceed the amount finally determined to be due, the Contractor shall repay the excess to the State upon demand, together with interest computed at the rate established by the California Treasurer's Pooled Money Investment Fund Rate. Interest shall be computed for the period from the date the excess payment is received by the Contractor to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Contractor's termination settlement proposal because of retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined by the State because of the circumstances.

In determining the amount payable to the Contractor and notwithstanding any other provision, if it appears that the Contractor would have sustained a loss on the entire contract had it been completed, the State shall allow no profit and shall

reduce the settlement to reflect the indicated rate of loss.

Unless otherwise provided in this contract or by statute, the Contractor shall maintain all records and documents relating to the terminated portion of this contract for three years after final settlement. This includes all books and other evidence bearing on the Contractor's costs and expenses under this Contract. The Contractor shall make these records and documents available to the State, at the Contractor's office, at all reasonable times, without any direct charge. If approved by the State, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

**37. TERMINATION OF CONTRACT:**

Upon termination or other expiration of this contract, each party will assist the other party in orderly termination of the contract and the transfer of all assets, tangible and intangible, as may facilitate the orderly, nondisrupted business continuation of each party. The contractor agrees to continue to install and support contracted services until migration to a replacement service is complete. If the migration effort is required to continue beyond the term of the contract, contractor agrees to extend this contract under the then existing terms for the time necessary to complete the migration.

**38. ASSIGNMENT OF ANTITRUST ACTIONS:**

The following provision of Government Code Section 4552, 4553, and 4554 (Statutes of 1978, Ch. 414) shall be applicable to the Contractor.

"In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under section 4 of the Clayton Act (15 U.S.C. sec. 15) or under the Cartwright Act [Chapter 2 (commencing with section 16700) of part 2 of division 7 of the Business and Professions Code], arising from purchases of goods, materials, or services by the bidder for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the bidder."

"If an awarding body or public purchasing body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public body any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the public body as part of the bid price, less the expenses incurred in obtaining that portion of the recovery."

"Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee

declines to file a court action for the cause of action."

**39. COVENANT AGAINST GRATUITIES:**

The Contractor warrants by signing hereon that no gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the Contractor or any agent or representative of the Contractor, to any officer or employee of the State with a view toward securing the contract or securing favorable treatment with respect to any determinations concerning the performance of the contract. For breach or violation of this warranty, the State shall have the right to terminate the contract, either in whole or in part, and any loss or damage sustained by the State in procuring on the open market any items which Contractor agreed to supply shall be borne and paid for by the Contractor. The rights and remedies of the State provided in the clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under the contract.

**40. YEAR 2000 WARRANTY:**

The contractor warrants that its hardware, software, and firmware products used or delivered under this contract shall be able to accurately process date data (including, but not limited to, calculating, comparing, and/or sequencing) from, into, and between the twentieth and twenty-first centuries, and the years 1999 and 2000 and leap year calculations to the extent that other information technology, used in combination with the information technology being used or acquired, properly exchanges date data with it. This warranty is subject to the warranty terms and conditions of this contract. Nothing in this warranty shall be construed to limit any rights or remedies the state may otherwise have under this contract with respect to defects other than Year 2000 performance.

**41. PRIORITY HIRING CONSIDERATIONS**

For contracts in excess of \$200,000 the contractor shall give priority consideration in filling vacancies in positions funded by the contract to qualified recipients of aid under Welfare and Institutions Code Section 11200.5 et. seq. and required by Welfare Institutions Code Section 11349 et. seq. in accordance with Public Contract Code Section 10353.

## **Rider A - SPECIAL PROVISIONS**

### **1. SPECIAL AGREEMENTS:**

Contractor agrees to remove State owned equipment in San Francisco and Los Angeles in time for the buildings to be razed (October 31, 1998, or within four months of the contract award date, whichever date is later, and December 31, 1999, respectively).

With regard to the San Francisco switch removal, Contractor agrees to pay \$5,000 per day liquidated damages in the event the switch is not relocated or its use terminated and the switch removed within the time period specified, which sum shall be payable to the City of San Francisco for any delay caused the city. Additional damages suffered by the State as a result of late switch removal at either San Francisco or Los Angeles shall be assessed in addition to these specific liquidated damages.

Contractor acknowledges that the City of San Francisco has an option to purchase the real property located at 525 Golden Gate Avenue. Solely for the purpose of enforcement of the liquidated damages provided herein, City of San Francisco is expressly made a third party beneficiary of this Agreement.

Contractor agrees to pay off the State's existing debt to GTE Leasing by the date set forth in the implementation plan. Contractor understands that the financial liability as of December 1, 1997 was \$20,857,363.

Contractor agrees to assume, and hereby does assume, all of the State's liability under its contract with Pacific Bell for fiber optic service at the major state locations in Sacramento, Los Angeles, San Francisco, and San Diego. Contractor understands that the State's liability continues to June 29, 2000. Contractor understands that the termination liability for the contract as of December 1, 1997 was \$2,862,990.

Contractor agrees to assume and hereby does assume all of the State's liability associated with its agreement with GTE Leasing to expand the existing CALDEX service to the Oakland State facility located at 1515 Clay Street, Oakland, CA. Contractor understands that the financial liability for this agreement as of December 1, 1997 was \$898,000.

Contractor agrees to remove any existing CALNET equipment that it is not using to supply services pursuant to this Agreement from state premises, if the Contractor does not wish to negotiate a lease-back of the state facilities.

### **2. CHARGES:**

Contractor agrees that the state and any authorized users are not subject to any minimum monthly usage charges for any services contracted under this agreement.

Invoices for all contracted services shall not be subject to late payment charges

prior to the contract defined due date.

Contractor agrees that no other customer of the contractor will receive better rates for similar services when the volume of business from the other customers is equal to or less than the volume of business the state delivers under this contract.

### **3. ADMINISTRATIVE FEE:**

In consideration for the services provided by the Telecommunications Divisions pursuant to this Agreement, Contractor agrees to pay Telecommunications Division an administrative reimbursement as established by the Telecommunications Division. On behalf of DGS/TD, the Contractor will bill and collect a contract administrative fee, to be determined by DGS/TD, on all contracted services. This fee shall be included within the amount charged to those entities obtaining service pursuant to the contract. The Contractor shall bill, collect, and remit a check based on the amount billed for this administrative fee to DGS/TD on a monthly basis at no additional cost. The administrative fee shall be paid to DGS/TD no later than the 20th of the month, for the amount billed the previous month. The fee will be based on Division costs to manage the eventual contract as well as perform other mandated functions and may be adjusted annually or as otherwise deemed necessary by DGS/TD, based on fiscal year projected requirements.

The contractor agrees to provide monthly summary reports identifying all services implemented under the contract. The reports shall provide, at a minimum, service period, identification of service type, quantity, total recurring revenue, total non-recurring revenue, DVBE dollars expended (if DVBE commitments were made), applicable administrative fee rate and total administrative fee billed.

The contractor agrees to provide monthly summary reports identifying all services implemented under the contract for an individual agency/customer. These reports shall contain, at a minimum, the name of the agency/customer, service period, type of service, quantity, total recurring charges, total nonrecurring charges (if applicable), applicable administrative fee rate and total administrative fee billed.

### **4. INVOICES AND PAYMENTS:**

Payments will be allowed monthly in arrears, upon satisfactory performance of service, acceptance of performance by State personnel, the State's receipt of an itemized invoice and supporting detail, and in accordance with applicable state payment procedures, unless otherwise specified in the contract.

Payment is due Contractor sixty (60) days from the date the equipment, software or services are received by the State, or sixty (60) days from the date a correct invoice is received by the office specified by the State, whichever is later. When provision is made for a testing period preceding acceptance by the State, the date of acceptance shall mean the date the equipment, software or service was accepted by the State during the specified period.

Charges for fractions of a calendar month shall be computed at the rate of 1/30 of

the applicable Total Monthly Charge, for each day service was provided.

The Contractor agrees to render individual bills directly to any agency authorized use of the contract by DGS/TD.

The contractor agrees to provide a reference to the state's Telecommunications Service Request (STD. 20) number on the invoice for related order activity.

The contractor agrees that invoices will provide usage call detail, itemized listing of monthly recurring service charges and nonrecurring charges, as applicable.

The contractor agrees that usage based services will be billed in six second increments or less with no more than an 18 second initial period.

The contractor agrees to provide a software program for customer billing data analysis and management reporting.

The contractor agrees to provide and print on the customer monthly invoice a toll free number for contracted services billing related questions and/or adjustments. Contractor agrees that staff responding to this toll free number will be fully familiar with the contracted service rates and applicable terms and conditions of the contract.

The contractor agrees, without prior state agency authorization, to provide to state auditing and/or investigative agencies a copy of any state agency bill and supporting detail in electronic format.

The State of California is exempt from Federal excise taxes, and no payment will be made for any taxes levied on employee's wages. The State will pay only for any State of California or local sales or use taxes on the services rendered or equipment or parts supplied pursuant to this contract. All applicable taxes shall be included in the Contractor's bid.

## **5. NOTICES:**

State:

Telecommunications Division

601 Sequoia Pacific Blvd.

Sacramento, CA 95814-0282

ATTN: CIIN Contract Administrator

Contractor

Address

Contact

## **6. SERVICE TO TAX-SUPPORTED ENTITIES:**

In accordance with Government Code 14931, Contractor agrees to provide service to all tax-supported agencies in the State pursuant to this Agreement and hereby acknowledges that the State is not responsible for payment for services rendered



these entities. Contractor agrees that it shall have no recourse against the State for any act or omission of the local entity which arises from Contractor furnishing goods or services pursuant to this Agreement.

**7. MODIFICATIONS:**

Contractor agrees that no modifications to the State's existing terminal equipment will be made which would result in any cost to the State or local entity receiving the service, unless specifically provided for under the terms of this contract.

**8. PROPRIETARY EQUIPMENT:**

Contractor agrees to accommodate all State and other authorized users which currently utilize proprietary equipment for CALDEX and CENTREX services.

**9. FRAME RELAY:**

Contractor agrees to provide an option for agencies to obtain the necessary Customer Premise Equipment (CPE), required to support frame relay services.

**10. ADDITIONAL SERVICE ITEMS:**

Contractor agrees that additional service items not specifically itemized, priced, or defined by this Agreement shall be submitted to DGS/TD for review and inclusion in the contract with specific pricing and service definition. Contractor understands that DGS/TD is fully responsible for this approval and agrees absent written approval from TD it may not deal with any State agency, unless excluded by law or exempt from DGS/TD oversight, or otherwise exempted, for the purpose of providing this information.

**11. GENERAL DGS/TD RESPONSIBILITIES:**

DGS/TD will continue to oversee the use of the contract by end users. DGS/TD may delegate to agencies the authority to submit requests for certain services directly to the Contractor. DGS/TD may also designate some services as non-delegated and require DGS/TD review and approval prior to agency acquisition. DGS/TD will use Contractor provided management reports and periodic random agency audits to monitor and administer contract usage for delegated services.

**12. GENERAL CONTRACTOR RESPONSIBILITIES:**

As associated with the defined contracted services, the Contractor shall:

- Provide staff to perform as the principal technical resource for information on pricing, features, and feature interactions/restrictions. This technical staff shall be available on demand by telephone and to participate in meetings to answer questions about these contracted services. These inquiries may be addressed without an order or Telecommunications Service Request (STD. 20) form.

- Provide documentation on pricing, features, and feature interactions/restrictions.
- Validate that the ordering agent of the agency is authorized to place such orders. The Contractor will have access to a database maintained by DGS/TD.
- Provide staff to act as technical resources in the planning and design of contracted services.
- Inform DGS/TD of instances where new services may be considered for inclusion in this contract.

### **13. MARKETING SERVICE SUPPORT:**

In order to provide the Contractor with market opportunities while satisfying DGS/TD's management responsibilities, the Contractor and DGS/TD will jointly develop a marketing plan after contract award that will include as a minimum the following elements:

- Provisions that contract marketing activities will be limited to currently approved contracted services and equipment.
- Provisions that the Contractor will not attempt to sell non-contracted services or equipment in direct competition with other services offered by DGS/TD.
- Provisions requiring contractor to obtain prior approval from DGS/TD to offer new services and equipment not presently included in this contract, if the services are related to the scope of this contract.
- Provision for adherence to guidelines and directives established by DGS/TD and published through appropriate administrative publications.
- Provision for ensuring marketing brochures and materials for contracted services are approved by DGS/TD prior to distribution.
- Provision for monthly reports on customer contact and contract usage for state and local government for the purpose of monitoring marketing plan effectiveness and contract performance.
- Provisions for establishing a forum for joint Contractor and DGS/TD market planning.

### **14. REQUIRED TRAINING SUPPORT:**

The Contractor is to offer client service use training as part of the service order and standard service provisioning process. This training shall be offered at the client premises, or optionally the client may choose to utilize off-site training, audio-visual training packets, personal computer based training, or other arranged opportunities. In addition to individual user training the clients may request training that will enable their own on-site user training programs, or train staff for administration of Automatic Call Distribution (ACD), Management

Information Systems (MIS), Voice Mail, or other similar enhanced services.

Contractor will provide training on the tools delivered to DGS/TD to be used for monitoring service performance, evaluating delivered services, and performing fiscal management. The contractor further agrees to provide DGS/TD staff access to its staff training processes and training classes.

**15. NETWORK OPERATION, MAINTENANCE AND MANAGEMENT:**

- General -- Contractor agrees to provide service, network operation, maintenance, and client billing by the Contractor for all services without direct state staff involvement.
- Client Representation -- DGS/TD agrees to represent clients in resolving issues of business transactions and service performances.
- Contractor Oversight -- DGS/TD agrees to oversee contracted service deliverables, associated fiscal transactions, and general contract compliance.
- Information Access -- Contractor agrees to provide oversight and management information access sufficient to allow DGS/TD to meet its responsibilities, including the ability to independently validate Contractor provided service performance and fiscal management information. The information access is expected to involve both historic electronic data and access to current service status.

**16. ADDITION OF NEW SERVICES/EQUIPMENT**

Contractor agrees that any additional services or equipment offered under this agreement which were neither specified in the state's SCP nor technologically available will only become a part of this agreement at the state's option.

**17. LIMITS ON MARKETING NEW SERVICES**

When a service becomes available that is related to the scope of the contract, the contractor agrees to come to the state to determine if the service has merit for the state and should be added to the contract. The state and the contractor must agree to the terms and conditions of offering the service through the contract. If the state determines that the service is not appropriate to be added to the contract, there will be no restrictions on the contractor regarding marketing the service.

If the state and the contractor cannot agree to the terms and conditions of including the service in the contract, even after using the dispute resolution process, the contractor agrees not to market the service to state agencies subject to the administrative oversight of DGS.

If the contractor fails to comply with these terms and markets services to state agencies subject to the administrative oversight of DGS, then the contractor provided service will be assessed the highest administrative fee available under the contract. The contractor agrees to remit to the state the said administrative fee with the next scheduled administrative fee payment.

**18. ANNUAL SERVICE REVIEW**

For the purpose of maintaining competitiveness throughout the term of this agreement, contractor agrees to a joint review of its pricing and service functionality, and marketing efforts annually to ensure state and its customers will receive cost competitive services throughout the terms of the contract. The contractor agrees that no other customer of the contractor will receive better rates for similar services when the volume of business from the other customer is equal to or less than the volume of business the state delivers under this contract.

**19. SUBCONTRACTORS (PUBLIC WORKS)**

Contractor agrees that when work is defined under this agreement via a Form 20 (or other form developed by the state) that includes public works tasks, the contractor will list on the Form 20 (or other designated form) the name, address, licenses number(s), and kind of work to be performed for any subcontractor performing public works tasks in excess of 1/2 of 1% of the Form 20 amount. This requirement is in accordance with the Subletting and Subcontracting Fair Practices Act (the "Act") as set forth in Public Contract Code Section 4100 through 4113. If the contractor fails to list a subcontractor for a public works task, the contractor agrees to perform that portion of the work or be subject to a penalty under the Act.

If the subcontractor is being used for the first time for the defined type of work, the state will verify that the subcontractor is appropriately licensed. If the contractor needs to add or replace a subcontractor after the Form 20 (or other appropriate form) has been submitted to the state, prior written approval must be obtained from the state in accordance with Public Contract Code Section 4107.

A public work is defined as involving any improvement, repair, construction, alteration, or maintenance to personal or real property of a public entity.

## **RIDER B - SERVICES AND EQUIPMENT PROVIDED**

(BUSINESS PARTNER TO COMPLETE)

The Std. Form 20 (Exhibit B-1), or an agreed to alternative, will be the vehicle for ordering services and equipment under this contract.

### **1. SERVICE DESCRIPTIONS**

The Business Partner should submit specific contract language that addresses at least the following for all services proposed with this agreement:

#### **a). Service Identifier**

This should be a unique name or identifier for the service that will link specifically to Rider C, Pricing.

#### **b). Description of the Service**

Provide a detailed description of the service with enough information that all parties will clearly understand what is being proposed. This includes any information about feature availability, limits, or compatibility restrictions.

#### **c). Performance Commitments**

Describe performance commitments in terms of installation intervals, availability, mean time to repair, or any other applicable performance parameter for the service.

#### **d). Rights and Remedies**

Identify the contractor's proposed rights of the state and the state's remedies for contractor's failure to perform to identified commitment levels.

### **2. EQUIPMENT DESCRIPTIONS**

The Business Partner should submit specific contract language that addresses at least the following for all equipment proposed with this agreement:

#### **a). Equipment Identifier**

This should be a unique name or identifier for the equipment that will link specifically to Rider C, Pricing.

**b). Description of the Equipment**

Provide a detailed description of the equipment with enough information that all parties will clearly understand what is being proposed. This includes any information about technical limits or compatibility restrictions.

**c). Performance Commitments**

Describe performance commitments in terms of installation intervals, availability, mean time to repair, or any other applicable performance parameter for the equipment.

**d). Rights and Remedies**

Identify the contractor's proposed rights of the state and the state's remedies for contractor's failure to perform to identified commitment levels.

Model language for adds, moves and changes is provided below. The Business Partner will propose language for other services offered.

**3. ADDS, MOVES AND CHANGES****a). CONTRACTOR RESPONSIBILITIES:**

The Contractor shall furnish the necessary supervision, technical direction, personnel, tools, equipment and services in connection with the services to be performed.

The Contractor shall provide moves, adds, changes and maintenance to the wire services described on Form 20 requests at the rates set forth in Rider C. The Contractor will document all moves, changes and activities and enter said data into a data base available to the State within 30 days of completion of the work. A hard copy of all such documentation shall be maintained in that building's main telephone equipment closet.

**b). PLACEMENT OF NEW FACILITIES:**

All new wire facilities placements will be in accordance with current State of California Wire Management Plan (Wiring Plan) in buildings where the existing wiring has been brought up to the Wiring Plan standards. All new placements must be approved by the Telecommunications Division's CIIN Project Manager or designated alternate prior to installation activity.

Each request from the State will include a description of the work to be performed, associated floor plans, the appropriate customer contact, access arrangements and required documentation (i.e. key sheets) and will be prepared in accordance with the State's "Needs Assessment Questionnaire."

**c). INSPECTION AND TESTING:**

The State and/or its authorized agents may inspect or test, at all times and places, any wire material and Wire Services provided by the Contractor.

The Contractor shall remain informed of, and in compliance with applicable federal, state, county and municipal laws, ordinances, rules and regulations, including but not limited to those cited herein.

The Contractor shall obtain permits and licenses as required to perform the Wire Services described herein and pay charges and fees, except as otherwise specified. Permits and licenses shall be obtained by the Contractor in a reasonable time. Should the schedule, as directed by the State, not allow for the acquisition of permits or licenses in a reasonable time to satisfy the State's schedule, the schedule will be adjusted accordingly.

**d). ACCIDENT PREVENTION:**

The Contractor shall comply with accident prevention and safety ordinances, rules and laws applicable to performance of work.

The Contractor shall furnish, erect and maintain fences, barriers, warning devices, and provide flag persons and guards to give warning to the public or others of any dangerous condition to be encountered as a result of work.

The State may order immediate action to correct conditions which endanger any person or property, or notify the Contractor thereof in writing. The Contractor, whenever possible, shall take corrective action within the time specified in the notice.

Pursuant to Section 6705 of the Labor Code, before beginning excavation for a trench five (5) feet or more in depth, the Contractor shall furnish to, and receive acceptance from the State for, detailed plans showing design of shoring, bracing, sloping, or other provisions to be made for worker protection from hazard of caving ground. Plans shall be furnished to and approved by the DGS/TD at least five (5) days before the Contractor intends to begin trench work. The Contractor will hold the State harmless for all liabilities resulting from trench excavation.

Prior to conducting excavation, the Contractor shall obtain permits and inquiry identification numbers pursuant to Sections 4216 and 4217 of the Government Code.

The Contractor shall advise Underground Service Alert (USA) in the event that the Contractor intends to excavate for any reason pursuant to this Agreement. The Contractor shall provide underground services marking for state-owned conduits.

**e). RETENTIONS FOR STOP NOTICES AND CLAIMS:**

The State will retain out of funds due or that become due to the

Contractor, sums sufficient to cover claims filed pursuant to Sections 3179 et seq. of the Civil Code, tax demands filed in accordance with Section 12419.4 of the Government Code, claims of state agencies offset under Sections 12419.5 of the Government Code, and other claims.

**f). GUARANTEE:**

The Contractor guarantees that work performed in accordance with this Rider shall be fit for use as intended and shall be in accordance with all contract requirements. Guarantee period shall be one year unless otherwise specified in Rider B, or if the Contractor's work is modified by a party other than the Contractor or the Contractor's subcontractor, or a longer period is provided by law. Guarantee period shall commence upon acceptance, or use by the State of a completed part of the project prior to acceptance, whichever occurs first. Guarantee periods for corrective work shall commence upon completion of corrections.

Corrective work under guarantees shall be performed as mutually agreed by the State and the Contractor.

**g). ACCESS TO TELEPHONE EQUIPMENT ROOMS:**

Persons authorized by the State and the Contractor will be the only authorized parties allowed access to the telephone equipment rooms.



**4. EXHIBIT B-1 - STD. FORM 20**

(Add STD Form 20)

**RIDER C - PRICING**

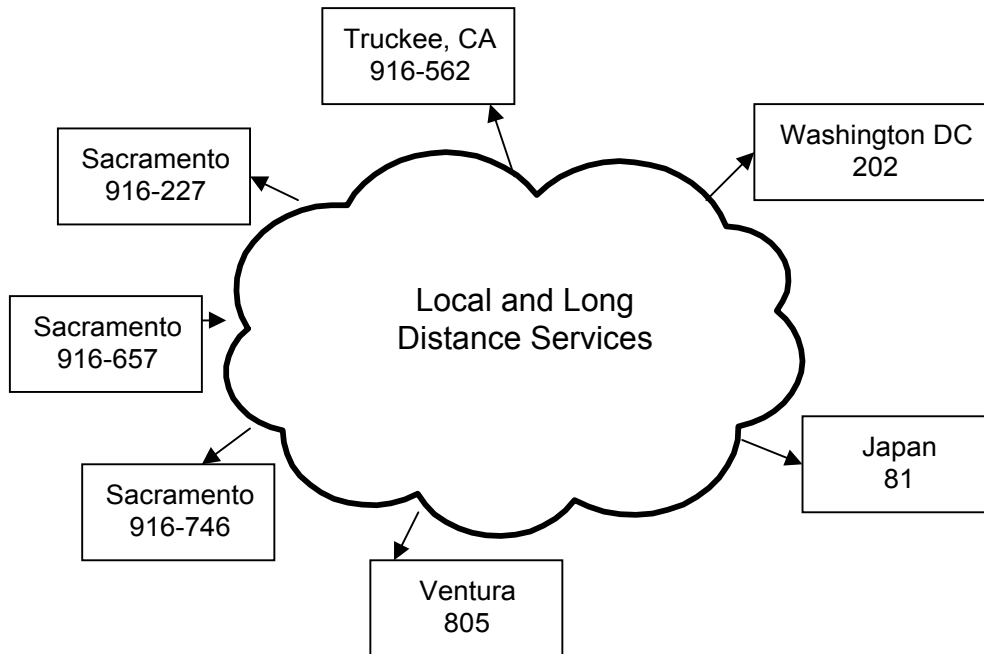
(TO BE DEVELOPED BY THE BUSINESS PARTNER)

All pricing for the contracted services, including price tiering, must be included in this Rider and clearly tied to services or products described in Rider B. The administrative fee is **not** to be included in the pricing. All applicable taxes, FCC/PUC mandated end user surcharges and surcredits, etc. are not to be included in the pricing, but services subject to such charges are to be clearly identified with the current applicable rate.

The contractor agrees to notify DGS/TD of any changes in the FCC or PUC mandated end user surcharges, surcredits, or taxes prior to them becoming effective.

**1. ATTACHMENT A - SERVICE ELEMENT COST MODELS AND TABLES**

- a) Exhibit 1 - Local and Long Distance Toll Services Model
  - Exhibit 1a - Service Element Cost Table
- b) Exhibit 2 - Calling Card Services Model
  - Exhibit 2a - Service Element Cost Table
- c) Exhibit 3 - Toll Free Services Model
  - Exhibit 3a - Service Element Cost Table
- d) Exhibit 4 - Line and Voice Mail Services Model
  - Exhibit 4a - Service Element Cost Table
- e) Exhibit 5 - Automatic Call Distribution (ACD) Service Model
  - Exhibit 5a - Service Element Cost Table
- f) Exhibit 6 - Private Line Data Service Model
  - Exhibit 6a - Service Element Cost Table
- g) Exhibit 7 - Frame Relay Service Model
  - Exhibit 7a - Service Element Cost Table

**a). Exhibit 1 - Local and Long Distance Toll Services Model**

- Exhibit 1a - Service Element Cost Table**

1. Four Minute Call Originating from 916-657, Sacramento, at 9:00 AM to 916-227, Sacramento

Cost Element	Usage
<b>Total</b>	<b>\$</b>

2. Four Minute Call Originating from 916-657, Sacramento, at 9:00 AM to 916-746, Sacramento

Cost Element	Usage
<b>Total</b>	<b>\$</b>

3. Four Minute Call Originating from 916-657, Sacramento, at 9:00 AM to 916-562, Truckee

Cost Element	Usage
<b>Total</b>	<b>\$</b>

4. Four Minute Call Originating from 916-657, Sacramento, at 9:00 AM to 805, Ventura

Cost Element	Usage
<b>Total</b>	<b>\$</b>

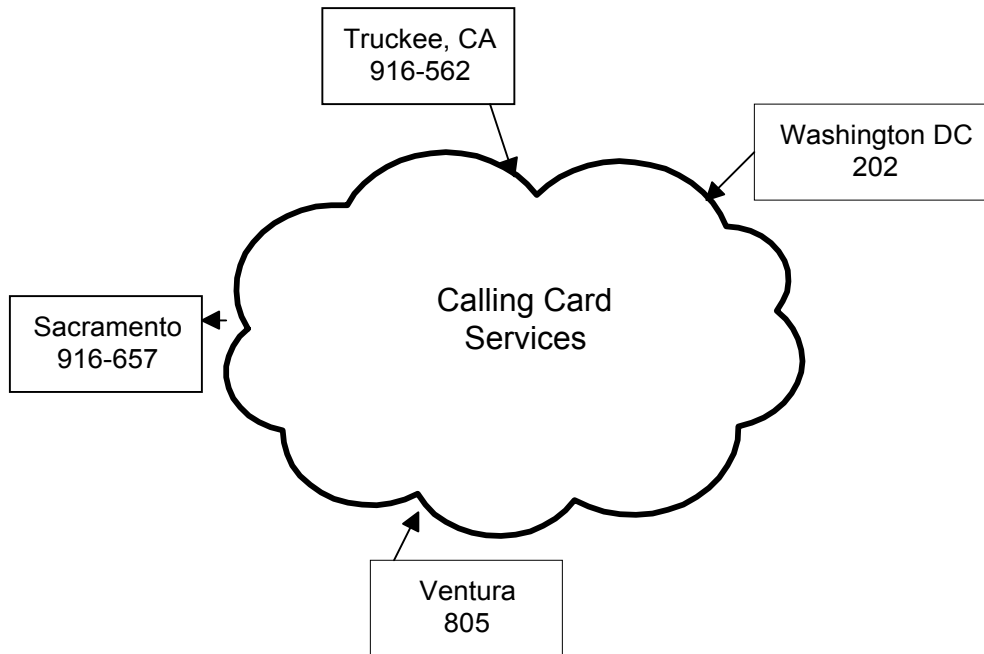
5. Four Minute Call Originating from 916-657, Sacramento, at 9:00 AM to 202, Washington DC

Cost Element	Usage
Total	\$

6. Four Minute Call Originating from 916-657, Sacramento, at 9:00 AM to 81, Japan

Cost Element	Usage
Total	\$

Local and Long Distance Toll Service	Usage
Grand Total	\$

**b). Exhibit 2 - Calling Card Services Model**



- Exhibit 2a - Service Element Cost Table**

1. Four Minute Call Originating from 916-562 Truckee, at 9:00 AM to 916-657, Sacramento

Cost Element	Per Call Cost	Usage
<b>Total</b>	<b>\$</b>	<b>\$</b>

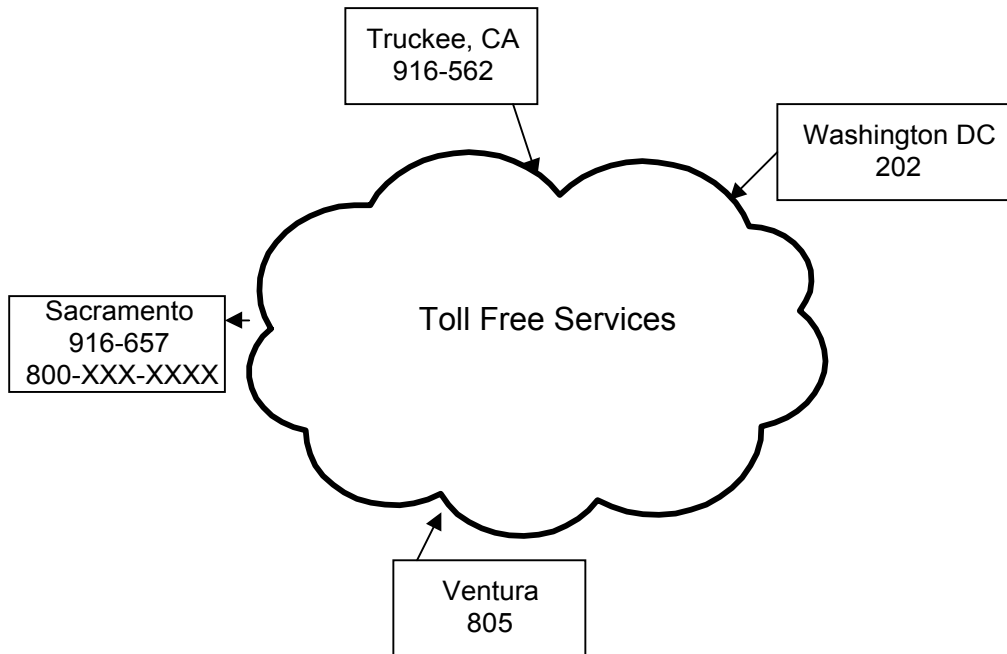
2. Four Minute Call Originating from 805, Ventura, at 9:00 AM to 916-657, Sacramento

Cost Element	Per Call Cost	Usage
<b>Total</b>	<b>\$</b>	<b>\$</b>

3. Four Minute Call Originating from 202, Washington DC, at 9:00 AM to 916-657, Sacramento

Cost Element	Per Call Cost	Usage
<b>Total</b>	<b>\$</b>	<b>\$</b>

Calling Card Service	Per Call Cost	Usage
<b>Grand Total</b>	<b>\$</b>	<b>\$</b>

**c). Exhibit 3 - Toll Free Services Model**

- Exhibit 3a - Service Element Cost Table**

1. Four Minute Call Originating from 916-562 Truckee, at 9:00 AM to 916-657, Sacramento

Cost Element	Monthly Recurring	Non Recurring	Usage
<b>Total</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>

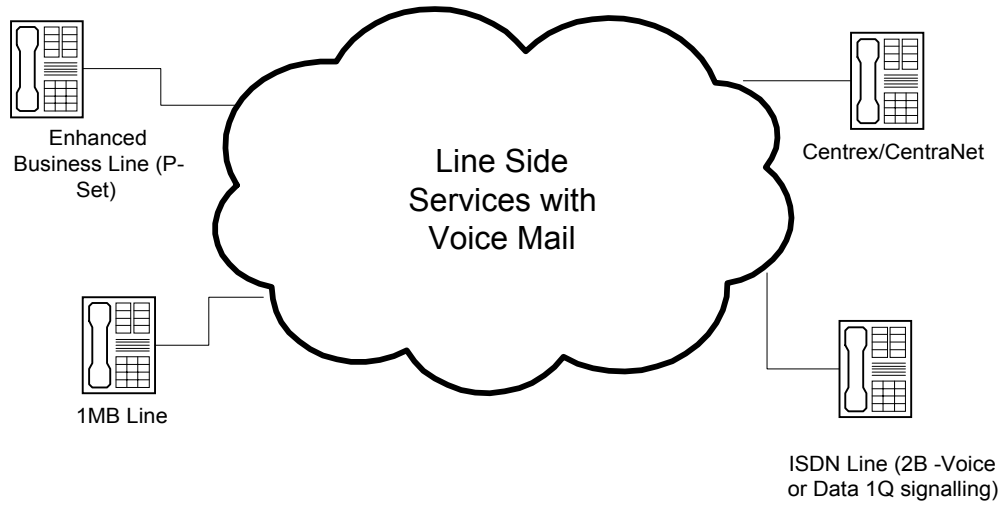
2. Four Minute Call Originating from 805, Ventura, at 9:00 AM to 916-657, Sacramento

Cost Element	Monthly Recurring	Non Recurring	Usage
<b>Total</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>

3. Four Minute Call Originating from 202, Washington DC, at 9:00 AM to 916-657, Sacramento

Cost Element	Monthly Recurring	Non Recurring	Usage
<b>Total</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>

Toll Free Service	Monthly Recurring	Non Recurring	Usage
<b>Grand Total</b>	<b>\$</b>		<b>\$</b>

**d). Exhibit 4 - Line and Voice Mail Services Model**

• **Exhibit 4a - Service Element Cost Table**

**1. Basic Service Line with Voice Mail**

Cost Element	Monthly Recurring	Non-Recurring
<b>Totals:</b>	\$ -	\$ -

**2. Basic Service Line with Centrex/CentraNet Features & Voice Mail**

Cost Element	Monthly Recurring	Non-Recurring
<b>Totals:</b>	\$ -	\$ -

**3. Enhanced Business Line (P-Set Line) with Voice Mail**

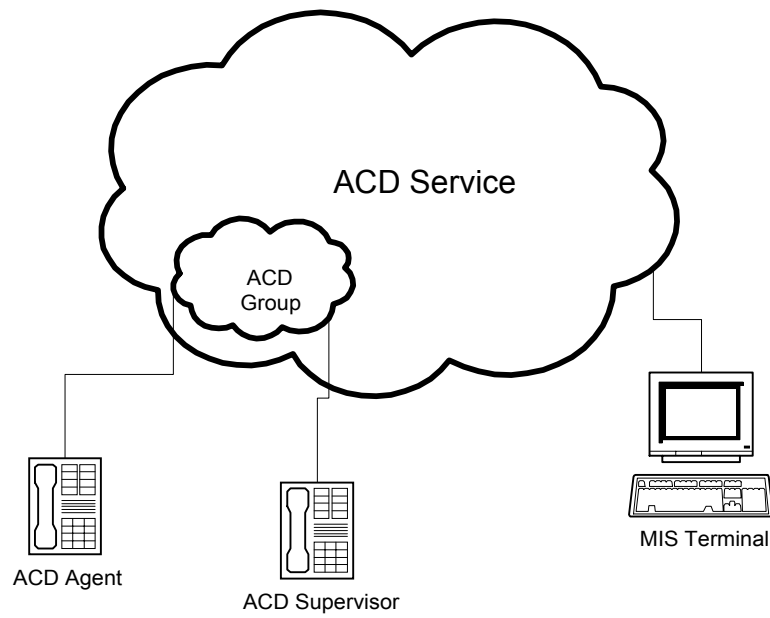
Cost Element	Monthly Recurring	Non-Recurring
<b>Totals:</b>	\$ -	\$ -

**4. ISDN Line with Voice Mail (2B-Voice & Data + 1Q-Signalling)**

Cost Element	Monthly Recurring	Non-Recurring
<b>Totals:</b>	\$ -	\$ -

Line Side Services	Monthly Recurring	Non-Recurring
<b>Grand Total:</b>	\$ -	\$ -

e). **Exhibit 5 - Automatic Call Distribution (ACD) Service Model**



• **Exhibit 5a - Service Element Cost Table**

**1. ACD Group**

Cost Element	Monthly Recurring	Non-Recurring
<b>Totals:</b>	\$ -	\$ -

**2. ACD Supervisor**

Cost Element	Monthly Recurring	Non-Recurring
<b>Totals:</b>	\$ -	\$ -

**3. ACD Agent**

Cost Element	Monthly Recurring	Non-Recurring
<b>Totals:</b>	\$ -	\$ -

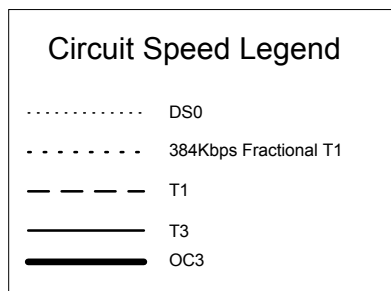
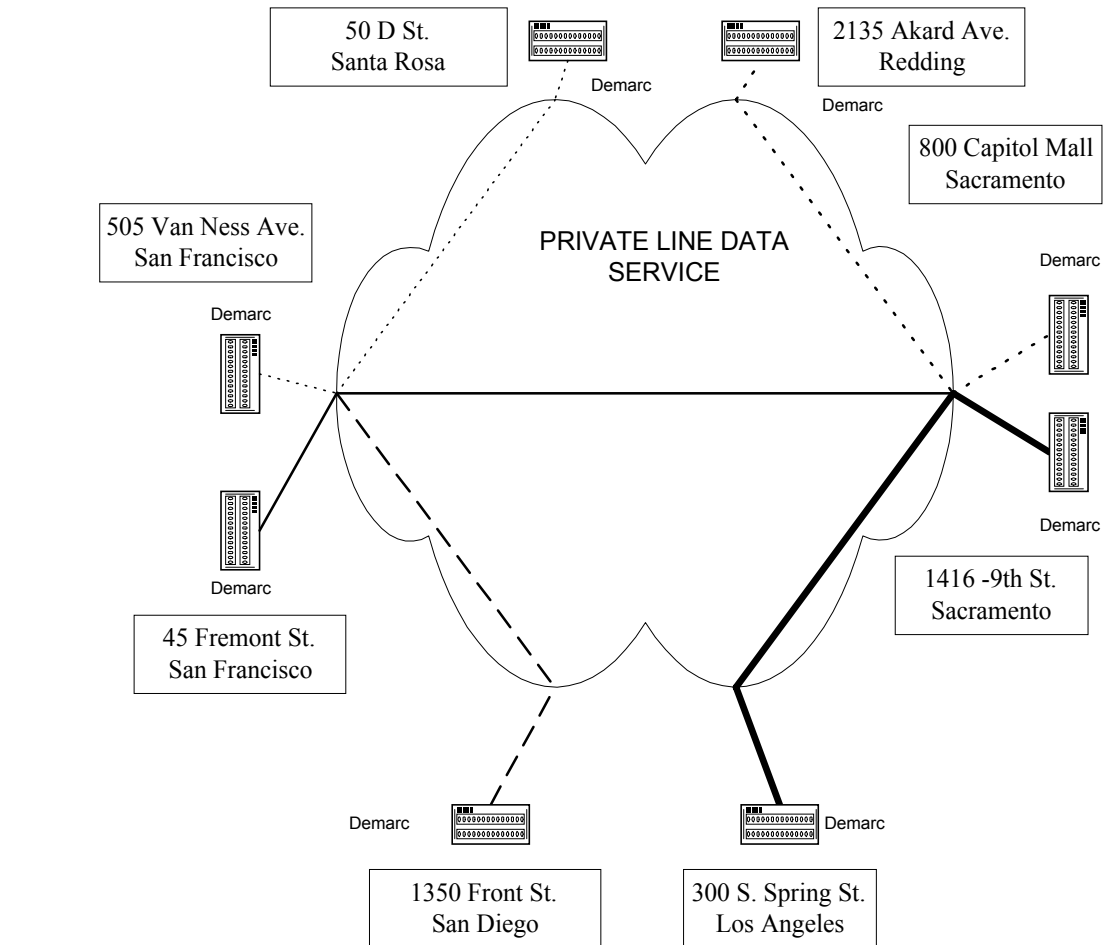
**4. ACD Announcements**

Cost Element	Monthly Recurring	Non-Recurring
<b>Totals:</b>	\$ -	\$ -

**5. ACD Management Information System (MIS)**

Cost Element	Monthly Recurring	Non-Recurring
<b>Totals:</b>	\$ -	\$ -

Automatic Call Distribution (ACD) Service	Monthly Recurring	Non-Recurring
<b>Grand Total:</b>	\$ -	\$ -

f). **Exhibit 6 - Private Line Data Service Model**



• **Exhibit 6a - Service Element Cost Table**

**1. DS0 Circuit - San Francisco to Santa Rosa**

Cost Element	Monthly Recurring	Non-Recurring
<b>Totals:</b>	\$ -	\$ -

**2. 384Kbps Fractional T1 Circuit - Sacramento to Redding**

Cost Element	Monthly Recurring	Non-Recurring
<b>Totals:</b>	\$ -	\$ -

**3. T1 Circuit - San Francisco to San Diego**

Cost Element	Monthly Recurring	Non-Recurring
<b>Totals:</b>	\$ -	\$ -

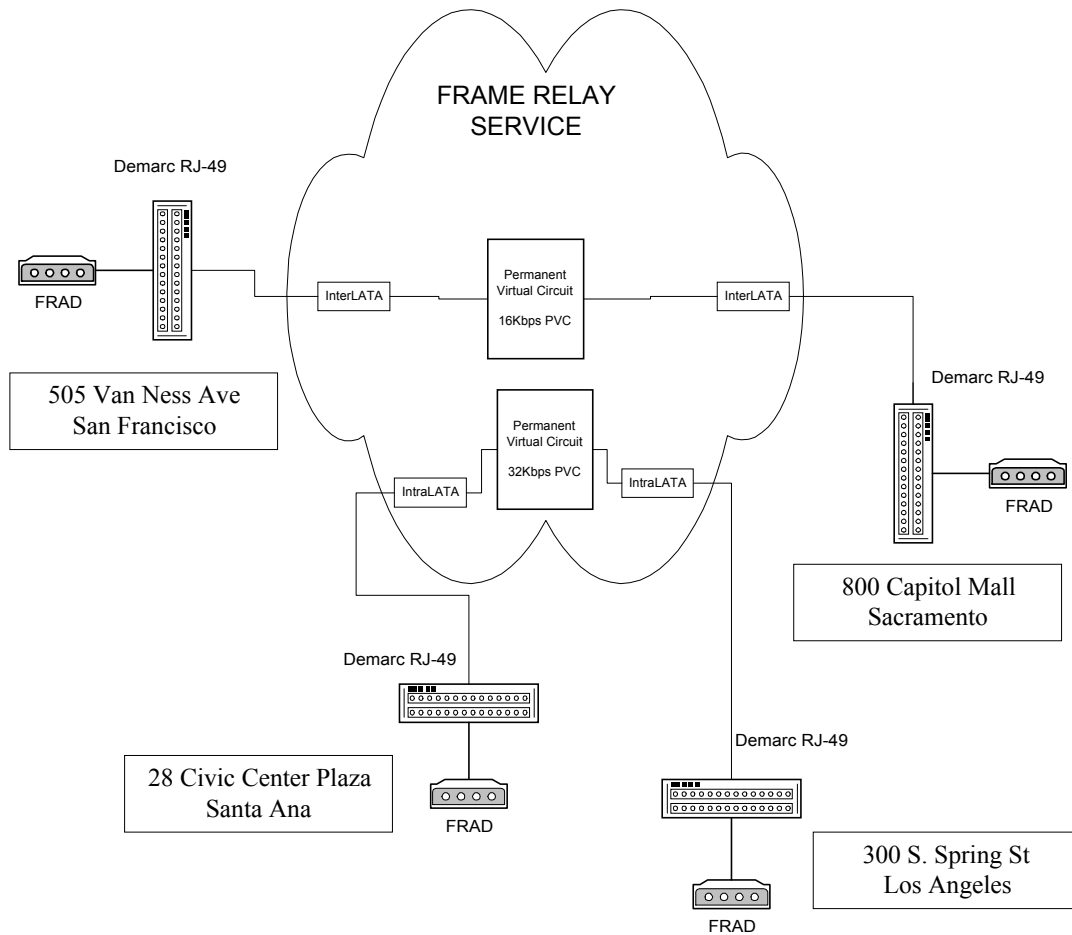
**4. T3 Circuit - San Francisco to Sacramento**

Cost Element	Monthly Recurring	Non-Recurring
<b>Totals:</b>	\$ -	\$ -

**5. OC3 Circuit - Sacramento to Los Angeles**

Cost Element	Monthly Recurring	Non-Recurring
<b>Totals:</b>	\$ -	\$ -

Private Line Data Service	Monthly Recurring	Non-Recurring
<b>Grand Total:</b>	\$ -	\$ -

**g). Exhibit 7 - Frame Relay Service Model**

- Exhibit 7a - Service Element Cost Table**

**1. IntraLATA Frame Relay Circuit and Equipment**

Cost Element	Monthly Recurring	Non-Recurring
<b>Totals:</b>	\$ -	\$ -

**2. InterLATA Frame Relay Circuit and Equipment**

Cost Element	Monthly Recurring	Non-Recurring
<b>Totals:</b>	\$ -	\$ -

Frame Relay Service	Monthly Recurring	Non-Recurring
<b>Grand Total:</b>	\$ -	\$ -

## **RIDER D - IMPLEMENTATION**

(TO BE DEVELOPED BY THE BUSINESS PARTNER)

## **RIDER E - ACCEPTANCE TESTING**

### **1. GENERAL:**

The purpose of this Rider is to set forth specific procedures and performance criteria for acceptance testing of services.

### **2. ACCEPTANCE TESTING OF THE INITIAL TELECOMMUNICATIONS SYSTEM:**

Immediately upon certification by the Contractor that the service is installed, the State will confirm its installation in accordance with the specifications of this solicitation. Upon confirmation by the State that the service is installed and all cutover criteria specified in this Rider are fulfilled, the State shall approve placing the service to full operational use for acceptance testing purposes.

### **3. ACCEPTANCE TESTING OF ADDITIONAL SERVICES:**

Individual services subsequently added to the contract, or services substituted or field modified by the Contractor, shall undergo acceptance testing substantially in accordance with the procedures set forth herein as they relate to the testing of individual services. Additions will undergo a 30-day acceptance testing period for compliance with standards specified below.

### **4. TESTING AND ACCEPTANCE:**

The contractor shall conduct the following test, witnessed by cognizant State personnel in accordance with terms and conditions attached.

#### **a). Installation Tests**

During installation, the Contractor shall perform all tests necessary to ensure that the portions of the service being installed are ready for pre-cutover tests. Written documentation will be required as to the test findings, and be available for State examination. The installation tests shall include but, not be limited to, the following:

- (1) visual and mechanical inspection;
- (2) Subsystem operational tests

#### **b). Pre-cutover Tests**

Prior to cutover of each portion of the service, the Contractor shall perform scheduled pre-cutover test designed to confirm the operation of all components and subsystems within the performance limits specified herein. All service features shall be tested and demonstrated. The Contractor shall provide all necessary test equipment and staff, and shall

furnish a certified copy of the test procedures, data and results to cognizant State personnel or their designees. Pre-cutover tests assuring successful performance for any designated portion of the system shall be completed at least 5 days prior to the scheduled cutover date for that portion, or later if so scheduled by cognizant State personnel or their designees.

Before cutover can occur, the Contractor will perform the following verifications and tests with State personnel:

- (1) Class of service test
- (2) Power failure
- (3) Features tested
- (4) Directory and SMDR data bases loaded
- (5) Billing Reports
- (6) Performance Monitoring Tools

**c). Acceptance Tests**

Acceptance of the system shall be granted after successful completion of the acceptance test for all portions of the system.

(1) Procedure

After cutover of any portions of the service, the Contractor shall conduct acceptance tests consistent with the terms of this contract.

(2) On-Going Performance

Performance to levels defined in service level agreements.

(3) Partial Service

Payment will be made for services installed and accepted.